

REMARKS/ARGUMENTS

Re-examination and favorable reconsideration in light of the above amendments and the following comments are respectfully requested.

Claims 13 - 24 are pending in the application. Currently, claims 13 - 21 stand rejected and claims 22 - 24 stand withdrawn from consideration.

By the present amendment, claims 13 - 16 and 18 have been amended.

In the office action mailed May 22, 2008, claims 13 - 21 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement; claims 13 - 21 were rejected under 35 U.S.C. 112, second paragraph as being indefinite; and claims 13 - 21 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,318,425 to Niemi alone or in view of U.S. Patent No. 4,250,935 to Helgesson et al.

The foregoing rejections are traversed by the instant response.

With respect to the Examiner's objection to the drawings, a corrected sheet of drawings is enclosed. The Examiner is hereby requested to approve the replacement sheet of drawings. The drawings have been amended to include a representation of the "processing unit" in FIG. 3. Further, the specification has been amended to delete any use of the reference numeral "11" as the "outer casing."

With respect to the objection to the Abstract, an amendment to the Abstract is provided herein.

With respect to the rejection of claims 13 - 21 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement, the Examiner contends that the disclosure nor the drawings provide support for how the diameter is calculable and that the specification nor the drawings support movable

measurement means as ultrasound devices. With regard to the latter issue, original claim 9 and paragraph 0033, provide support for the movable measurement means being ultrasound devices. One of ordinary skill in the art reading the specification would understand how to use ultrasound devices as measurement means. It is well settled law that the specification does not have to disclose that which is well known in the art. The use of ultrasound devices is well known in the art. Similarly, the calculation of the diameter of a tree stem is well known to those skilled in the art. For example, see paragraph 0005 which describes the calculation of a diameter. One of ordinary skill in the art can use the technique disclosed therein to calculate the diameter even though the points between which the diameter extends have been registered in a different way. For these reasons, the Examiner is requested to withdraw the rejection.

With regard to the rejection under 35 U.S.C. 112, second paragraph, the claims are to be read in light of the specification. How the various features are operated and how they are connected to each other are set forth in the specification. Thus, one of ordinary skill in the art reading the claims in light of the specification would avoid any issue of ambiguity. If the Examiner still believes that the claims must say how the various features are connected together, the Examiner is requested to cite appropriate case law in support of such a proposition. Absent such a citation, the rejection should be withdrawn. Applicant has fully complied with the requirements of 35 U.S.C. 112, second paragraph, by particularly pointing out and distinctly claiming what Applicant believes to be his invention. Nothing more is required by the second paragraph of 35 U.S.C. 112. With respect to the word "its", this word refers to the tree stem. Claim 13 has been amended to clarify this point. With regard to the so-called intended use recitations, there is no prohibition against including the language

in the claims, particularly in a means plus function format. As to the Examiner given these terms any patentable weight, it is well settled law that each word in a claim must be considered, particularly when they are in a means plus function format. For the foregoing reasons, this rejection should be withdrawn.

With respect to the rejection of claims 13 - 21 under 35 U.S.C. 103(a), claim 13 is allowable over both of these references. Both the '425 patent to Niemi and the '935 patent to Helgesson et al. disclose methods and apparatuses for measuring which require that the force or position of the delimbing devices be measured and compared to known values for diameters. The '935 patent to Helgesson et al. states in column 4, lines 18 - 20, that the diameter transducer is coupled to a knife to sense its turning position. The delimbing devices in the '935 patent to Helgesson et al. hence act as mechanical sensors, which are in contact with the tree stem. Still further, there is no disclosure in Helgesson et al. that the diameter transducer is movable. In the '425 reference to Niemi, the sensor means (11) is fixed and attached to the articulation system of the tree supporting means and thus functions as a mechanical sensor. Similarly, the sensor (12) is a roller which is in contact with the tree stem. In the present invention, the sensors do not touch the tree stem, but are positioned some distance away from the tree stem, which is a significant difference. The problems with using the delimbing devices (knives) as sensors are described in paragraph 0006 of the published version of the instant application. Claim 13, as amended herein, clearly calls for a "second measurement means including movable measurement means for *contact-free detection* (emphasis added) of an outer contour of the tree stem, from which a diameter is calculable, and the second measurement means *being located between the trimming device and the advancement means* (emphasis added) for counteracting dirtying of the second measurement device. Neither reference

teaches or suggests a movable measurement means for contact-free detection of an outer contour of the tree stem and/or positioning of the second measurement means between the trimming device and the advancement means. Thus, neither reference, taken alone or in combination, renders the claimed invention obvious.

Claims 14 - 21 are allowable for the same reasons as claim 13 as well as on their own accord. For example, neither reference teaches or suggests the gap of claim 14; the location of the second measurement means set forth in claim 15; the processing unit of claim 17; the movable measurement means of claims 18 and 19; the movable measurement means of claim 20; and the ultrasound devices of claim 21.

For the foregoing reasons, claims 13 - 21 are believed to be in condition for allowance. Such allowance is respectfully solicited.

Should the Examiner believe an additional amendment is needed to place the case in condition for allowance, the Examiner is hereby invited to contact Applicant's attorney at the telephone number listed below.

A request for a one (1) month extension of time is enclosed herewith. The Director is hereby authorized to charge the extension of time fee in the amount of \$120.00 to Deposit Account No. 02-0184.

Should the Director determine that an additional fee is due, he is hereby authorized to charge said fee to said Deposit Account No. 02-0184.

Appln. No. 10/578,169
Amdt. dated September 22, 2008
Reply to office action of May 22, 2008

Attorney Docket No.: 06-300

Respectfully submitted,
Christer Lennartsson

By/Barry L. Kelmachter #29999/
Barry L. Kelmachter
BACHMAN & LaPOINTE, P.C.
Reg. No. 29,999
Attorney for Applicant

Telephone: (203)777-6628 ext. 112
Telefax: (203)865-0297
Email: docket@bachlap.com

Date: September 22, 2008